

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Sullivan Township, Moultrie County, Illinois	:	
Petitioner,	:	
	:	
Vs.	:	
	:	
Union Pacific Railroad Company and the State of Illinois, Illinois	:	
Department of Transportation,	:	
Respondents.	:	
	:	T03-0048
Petition for an Order of the Illinois Commerce Commission	:	Supp.
authorizing permanent closure and removal of the T.R. 104 grade	:	
crossing (DOT # 167270M) and authorizing the signalization and	:	
improvement of the T.R. 117A grade crossing (DOT # 167269T)	:	
located in Sullivan Township, Moultrie County, Illinois on the	:	
trackage of Union Pacific Railway Company, together with	:	
construction of a connecting road, and allocating a portion of the	:	
cost to the Grade Crossing Protection Fund.	:	

SUPPLEMENTAL ORDER

By the Commission:

On September 4, 2003, the Illinois Commerce Commission ("Commission") entered its Order in this matter that required the Union Pacific Railroad Company ("Company" or "UP") to close, abolish, and barricade the TR 104 grade crossing, install automatic flashing light signals and gates controlled by constant warning time circuitry at the Eden Street (TR 117A) crossing, and construct a connecting road between TR 117A and Eden Street. The Order required the work to be done within twelve (12) months of the date of the original Order.

The Order on Rehearing, entered by the Commission on May 5, 2004, reaffirmed the original Order but did not set a specific date for the completion of the work, usually one (1) year from the date of an Order. The Order on Rehearing was appealed to the Circuit Court by the UP challenging the cost allocations and the cost benefit analysis. The Circuit Court decision affirming the Order on Rehearing was issued in February 2005.

On June 8, 2005, the UP filed its Supplemental Petition with the Commission requesting an extension of time within which to complete the work as required by the Order on Rehearing. Until the aforementioned appeal was concluded, the UP was not in a position to finalize its estimates and obtain a work order to proceed with the project. The UP has now updated its estimate and, after submitting its design plans to ICC staff for review, the UP will be able to get a work order and start the process of ordering parts, getting the cabin wired, schedule the work, and complete the installation.

The UP states that when an Order does not contain a specific completion date, it is presumed that a reasonable period of time is intended, which usually is considered to be no less than one (1) year from the date of the Order. The UP further avers that in this case, the UP was not in a position to complete the work within the required time as inferred by the Order on Rehearing, but does believe that the work can be completed by December 31, 2005. Therefore, the UP requests the Commission enter a Supplemental Order granting an extension of time to and including December 31, 2005.

Staff has no objection to the requested extension of time. However, it does have a different opinion about the completion dates as set forth or not in the original Order or Order on Rehearing. The original Order required the project to be completed within one (1) year from its date of entry, or September 4, 2004. The Order on Rehearing reaffirmed the terms of the original Order. Whether the time for completion as set forth in the original Order or the inferred completion date of one (1) year from the date of entry of the Order on Rehearing, the (1) year completion time has expired for both the original Order and Order on Rehearing.

Moultrie County, on behalf of the Sullivan Township, has completed the construction of the connecting road between TR 104 and TR 117A.

The Commission, having given due consideration to the entire record herein, finds that:

- 1) The Commission has jurisdiction over the parties hereto and the subject matter herein;
- 2) The recitals of fact as set forth in the prefatory portion of the Supplemental Order are true and correct and are hereby adopted as findings of fact;
- 3) The UP should be granted an extension of time to and including December 31, 2005, within which to complete the installation of the automatic warning devices and the crossing surface at the TR 117A crossing, and the closure of the TR 104 crossing;

- 4) All other terms and conditions of the original Order and Order on Rehearing, dated September 4, 2003 and May 5, 2004, respectively, shall remain in full force and effect except as herein modified;
- 5) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties (or insert entity name) to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that an extension of time to and including December 31, 2005, be and it is hereby, granted to the Union Pacific Railroad Company within which to complete the work as required by the original Order and Order on Rehearing, dated September 4, 2003 and May 5, 2004, respectively.

IT IS FURTHER ORDERED that the provisions of the original Order and Order on Rehearing, dated September 4, 2003 and May 5, 2004, shall remain in full force and effect except as herein modified.

IT IS FURTHER ORDERED that all bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund shall be submitted to the Fiscal Control Unit of the Illinois Department of Transportation Bureau of Local Roads and Streets, 2300 South Dirksen Parkway, Springfield, IL 62764. A copy of all bills received shall be submitted to the Director of Processing and Information, Transportation Division of the Commission. The final bill for expenditures from the UP shall be clearly marked "Final Bill". All bills shall be submitted no later than six (6) months from the date of completion as set forth in this Supplemental Order or any future Orders entered by the Commission in this case. The Department shall, at the end of the 6th month from the Commission Order completion date or any future Order(s) completion date(s) entered by the Commission in this case, de-obligate all residual funds accountable for the cost of the warning device installation.

IT IS FURTHER ORDERED that any person making a Request for Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting a extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that requests For Extension of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests For Extension Of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that, subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review law.

By the Commission is 13th day of July 2005.

A handwritten signature in black ink, reading "Edward C. Husley" with a stylized flourish at the end.

Chairman